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No. 436

IN THE

# Supreme Court of the United States

OCTOBER TERM 1957

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FEDERAL TRADE COMMISSION,
PETITIONER,

vs.

THE AMERICAN HOSPITAL AND LIFE INSURANCE COMPANY,
RESPONDENT.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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## Brief for Respondent in Opposition

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**The Respondent, The American Hospital and** Life Insurance Company, asserts that the decision of the Court of Appeals for the Fifth Circuit is correct, that the Supreme Court of the United States has already fully construed the McCarran Act insofar as is necessary in relation to the facts in this case and that there is no reason for granting of writ of certiorari in this case.

### Question Presented

As far as this case is concerned the statement of the question presented, on page 2 of the petition, is

entirely too broad. Petitioner says that the question presented is whether the McCarran-Ferguson Act is to be construed as divesting the Commission of jurisdiction over false and misleading advertising in connection with the interstate sale of insurance because of the mere enactment of State laws prohibiting such practices within the boundaries of the State involved. The only question presented in this case for consideration by the Supreme Court is the narrow question of whether the Federal Trade Commission has jurisdiction of a complaint charging as deceptive, matter transmitted by the home office to agents in the several States and distributed by agents licensed to do business in a particular State, such agent never crossing a State line nor sending any of such matter across a State line, when in each of such States a completely adequate regulatory law has been passed giving the State full and complete power to control the acts of the agent and company in each respective State, the agent's and company's activity in reference to such matter complained of being absolutely confined within the boundaries of such State.

On page 4 of the petition Petitioner comments on the fact that an application for a policy is sent through the mail to the home office in Texas and that the policy is mailed by Respondent to the agent in the other State for delivery to the purchaser. Nowhere in the complaint is it charged that there was any deception connected with this interstate transaction; the

only charge is that the brochures sent by the home office to agents in other States and distributed by such agents only within the confines of the State in which the respective agent had authority to act contained deceptive matter.

In no instance was any of the matter complained of sent by the home office directly to a prospect. (Official Report of Proceedings before Federal Trade Commission, pages 266-7)

Respondent has done no advertising by newspaper, magazine, radio or television. (Official Report of Proceedings before Federal Trade Commission, pages 112-4) The Court of Appeals so found: "It did no advertising by newspapers or other periodicals or by radio or television." (Exhibit "A", Petition for Writ, page 11).

Petitioner throughout is making the obvious attempt to have this case considered by the Supreme Court on the facts in the National Casualty Co. case rather than on the facts in this case.

The judgment in this case was entered by the Court of Appeals for the 5th Circuit on April 9, 1957. The judgment of the Court of Appeals for the 6th Circuit in the National Casualty Co. case was not entered until June 6, 1957.

In the National Casualty Co. petition it is stated as a fact that some of the advertising material is dis-

seminated directly from the home office to the public and that the Examiner held that the Commission had jurisdiction to proscribe deceptive and misleading representations made by National Casualty Co. and disseminated directly by mail to prospective purchasers in the several States. There are no such facts in The American Hospital and Life Insurance Company case.

It is obvious that it might not be practicable for the State of Arkansas to control the mailing of matter from San Antonio, Texas, to citizens living in Arkansas, but the State of Arkansas has adequate and complete power to control the distribution of matter by an agent in Arkansas to citizens also living in Arkansas, and this is the only way that the advertising matter of The American Hospital and Life Insurance Company is distributed.

In its obvious attempt to seek to have The American Hospital and Life Insurance Company case decided on the facts of the National Casualty Co. case much of the matter presented in The American Hospital and Life Insurance Company petition is merely by reference to the National Casualty Co. petition, a case decided two months later.

Even the opinion of the Federal Trade Commissi in The American Hospital and Life Insurance Company case is set out as Appendix "D" to the National Casualty Co. petition rather than being set out as appendix to the petition in The American Hospital

and Life Insurance Company case. Respondent asserts that the petition in this case should be considered solely on the narrow facts in this case and that Petitioner's obvious effort to have it considered on the less favorable facts in the National Casualty Co. case is entirely inappropriate.

## ARGUMENT

Respondent has never taken the position that the proviso set out in Section 2(b) of the McCarran Act is meaningless. It states plainly that the Federal Trade Commission Act shall be applicable to the business of insurance **to the extent that such business is not regulated by State Law.** Respondent has always asserted, and now asserts, that the control and regulation of the matter complained of in the Federal Trade Commission's complaint in this case is completely, adequately and effectively regulated by the State law in every State in which Respondent does business. The only distribution or dissemination of the matter complained of is wholly within the confines of the State in which the agent operates and is delivered solely to persons within such State. The agents who disseminate and distribute the matter are licensed by the Insurance Commission in the State in which they reside and in which they operate. They never cross a State line with the matter complained of nor do they ever send any of the matter complained of across a State line.

Under each of the State laws the Insurance Commission has all of the powers to control the agents within that State and to control the Respondent receiving a permit to do business in that State.

There is set out as Appendix "A" to this brief the full text of Arkansas's regulatory statute and, as stated by Petitioner in footnote 3, page 5, all of the States in which Respondent does business have identical or substantially identical or comparable statutes. Under all of these statutes the Insurance Commissioner is given the same broad powers over false and deceptive advertising matter as is given to the Federal Trade Commission by the Federal statute, including the power to issue cease and desist orders. Additionally, each State has the power to revoke the licenses of agents and to revoke the permit to insurance companies to do business within the State.

As the only distribution of the matter complained of is distribution wholly within the confines of the State by agents whose license may be revoked by the Insurance Commissioner at any time, these agents representing an insurance company whose permit to do business in the State may also be revoked at any time, with both the agents and the insurance company subject to process within the State and upon whom completely enforcible cease and desist order may be served at any time, Respondent submits that the matter complained of in the Federal Trade Commission's

complaint in this case is subject to complete, adequate and effective control at all times by every State in which Respondent does business.

In reference to newspaper and magazine advertising, and radio and television advertising, it might be contended that Arkansas's control of newspaper and magazine advertising published in newspapers and magazines which were transmitted through the United States mail to residents of the State of Arkansas, could not be effectively prevented by the State of Arkansas, and it might be contended that radio and television advertising put on the air in San Antonio, Texas, and being heard or seen by people residing in the State of Arkansas, could not be effectively controlled by the Insurance Commissioner of the State of Arkansas. On the other hand, it might be argued that even as to this type of advertising, as the State of Arkansas would have the power to cancel Respondent's permit to do business in Arkansas, and revoke the licenses of its agents there, that this would be an effective means of regulating either newspaper, magazine, radio or television advertising, but as Respondent engages in absolutely none of these types of advertising and as no such charge was contained in the complaint of the Federal Trade Commission, those questions are in no way in the case and Respondent respectfully submits that petitioner's conjecture as to whether these types of advertising are subject to State

control has no place whatever in the consideration of this case.

## INSOFAR AS THIS CASE IS CONCERNED THE QUESTION PRESENTED HAS BEEN SETTLED BY THE DECISIONS OF THE SUPREME COURT.

Obviously the only basis on which the Petitioner could properly seek a writ of certiorari in this case would be on the premise that the Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by the Supreme Court.

Respondent submits that its position that the Federal Trade Commission's jurisdiction as to the business of insurance extends only to the extent that such business is not regulated by State law is fully upheld by the opinion of the Supreme Court in Prudential Insurance Co. vs. Benjamin, 328 U.S. 408.

It is true that the Prudential case arose during the moratorium and it is also true that the Prudential case had to do with taxation rather than regulation. Respondent submits, however, that the pronouncements of the Court in the Prudential case are just as pertinent subsequent to the moratorium as they were during its pendency because the language of the Act is perfectly clear that after the moratorium the Federal Trade Commission will have jurisdiction only "to the

**extent that such business is not regulated by State law."**

It is entirely conceivable that in a case involving newspaper, magazine, radio or television advertising that there might be an area in which the Supreme Court would deem it appropriate to make pronouncements, but Respondent respectfully submits that in this case where the undisputed evidence conclusively establishes that States under the provisions of their regulatory laws have the power completely to control every act of Respondent included in the Commission's complaint in this case, that there is no occasion for time of the Supreme Court to be consumed merely to reiterate the principles announced by it in the Prudential case, 328 U.S. 408, Wilburn Boat Co. case, 348 U.S. 310, Robertson vs. California, 320 U.S. 440, and Maryland Casualty Co. case, 347 U.S. 409.

WHEREFORE, Respondent prays that petition for certiorari in this case be denied.

Dated September 20, 1957.

Respectfully submitted,

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# APPENDIX "A"

## ARKANSAS

## UNFAIR TRADE PRACTICES

**§ 186. (66-1701). Declaration of purpose.**—The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress [ch. 20, 59 U. S. Stat. at Large 33]), by defining, or providing for the determination of, all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. § 1, Act 303 of 1949.

**§ 187. (66-1702). Definitions.** — When used in this Act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters.

(b) "Commissioner" shall mean the Insurance Commissioner of this State. Id. § 2.

**§ 188. (66-1703). Unfair methods of competition or unfair and deceptive acts or practices prohibited.**—No person shall engage in this State in any trade

practice which is defined in this Act as, or determined pursuant to this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. Id. § 3.

**§ 189. (66-1704).—Unfair methods of competition and unfair or deceptive acts or practices defined.** —The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance.

(1) MISREPRESENTATION AND FALSE ADVERTISING OF POLICY CONTRACTS. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.

(2) FALSE INFORMATION AND ADVERTISING GENERALLY. Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) DEFAMATION. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is circulated to injure any person engaged in the business of insurance.

(4) BOYCOTT, COERCION AND INTIMIDATION. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(5) FALSE FINANCIAL STATEMENTS. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

(6) STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or any advisory board contract promising returns and profits as an inducement to insurance.

(7) UNFAIR DISCRIMINATION. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life

in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

(8) REBATES. (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance

company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in Clause 7 or paragraph (a) of Clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) in the case of any contract of life insurance or life annuity, paying bonuses to policy-holders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance, provided that any such bonuses, or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders; (ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense; (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year. Id. § 4.

**§ 190. (66-1705). Power of commissioner.**—The Commissioner shall have power to examine and in-

vestigate into the affairs of every person engaged in the business of insurance in this State in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by section 188 of this digest. Id. § 5.

**§ 191. (66-1706). Hearings—Production of books—Service of process.**—(a) Whenever the commissioner shall have reason to believe that any such person has been engaged or is engaging in this State in any unfair method of competition or any unfair or deceptive act or practice defined in section 189 of this digest, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 10 days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence.

(d) The Commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The Commissioner, upon hearing, may, and upon request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the Commissioner shall prepare a statement of the evidence and proceedings for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the Chancery Court of Pulaski County, on application of the Commissioner, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) Statements of charges, notices, orders, and other processes of the Commissioner under this Act may be served by anyone duly authorized by the Com-

missioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same. Id. § 6.

**§ 192. (66-1707). Cease and desist orders and modifications thereof.**—If, after such hearing the Commissioner shall determine that the method of competition or the act or practice in question is defined in Section 4 (§ 189) and that the person complained of has engaged in such method of competition, act or practice in violation of this Act, he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(b) Until the expiration of the time allowed under Section 8 (a) (§ 193) for filing a petition for review (by appeal or writ of certiorari) if no such petition has been duly filed within such time or, if a

petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the Chancery Court, as hereinafter provided, the Commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require. Id. § 7.

**§ 193. (66-1708). Judicial review of cease and desist orders.**—(a) Any person required by an order of the Commissioner under Section 7 (§ 192) to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4 (§ 189) may obtain a review of such order by filing in the Chancery Court of Pulaski County, within 30 days from the date of the service of such order, a written petition praying that the order of the Commissioner be set aside. A copy of such petition shall be forthwith served upon the Commissioner, and thereupon the Commissioner forthwith shall certify

and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commissioner. Upon such filing of the petition and transcript such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the Commissioner, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming or reversing the order of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive.

(b) To the extent that the order of the Commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the preceeding before the Commissioner, the court may order such additional evidence to be taken before the Commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commissioner may modify his findings of fact, or make new findings by reason of the

additional evidence so taken, and he shall file such modified or new findings which, if supported by substantial evidence shall be conclusive, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) A cease and desist order issued by the Commissioner under Section 7 (§ 192) shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, except that the Commissioner may thereafter modify or set aside his order the extent provided in Section 7 (§ 192) (b); or

(2) Upon the final decision of the court if the court directs that the order of the Commissioner be affirmed or the petition for review dismissed.

(d) No order of the Commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this State. Id. § 8.

**§ 194. (66-1709). Procedure as to unfair methods of competition and unfair or deceptive acts or practices which are not defined.**—(a) Whenever the Commissioner shall have reason to believe that any person engaged in the business of insurance is engaging in this State in any method of competition or in any act

or practice in the conduct of such business which is not defined in Section 4 [§ 66-1704], that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 10 days after the date of the service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in Section 6 (§ 191). The Commissioner shall, after such hearing, make a report in writing in which he shall state his findings as to the facts, and he shall serve a copy thereof upon such person.

(b) If such report charges a violation of this Act and if such method of competition, act or practice has not been discontinued, the Commissioner may, through the Attorney General of this State, at any time after 20 days after the service of such report cause a petition to be filed in the Chancery Court of this State within the district wherein the person resides or has his principal place of business, to enjoin and restrain such person from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary

in its judgment to prevent injury to the public pendente lite.

(c) A transcript of the proceedings before the Commissioner including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show, to the satisfaction of the court, that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commissioner the court may order such additional evidence to be taken before the Commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.

(d) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the Commissioner with respect thereto is to the interest of the public and that the findings of the Commissioner are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice. Id. § 9..

**§ 195. (66-1710). Judicial review by intervenor.**—If the report of the Commissioner does not charge a violation of this Act, then any intervenor in the proceedings may within 30 days after the service of such report, cause a notice of appeal or petition for writ of certiorari to be filed in the Chancery Court of Pulaski County for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which finds, notwithstanding such report of the Commissioner, constitutes a violation of this Act. Id. § 10.

**§ 196. (66-1711). Penalty.**—Any person who violates a cease and desist order of the Commissioner under Section 7 (§ 192), after it has become final, and while such order is in effect, shall upon proof thereof to the satisfaction of the court, forfeit and pay to the State of Arkansas a sum not to exceed $50, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed $500. Id. § 11.

**§ 197. (66-1712). Provisions of act additional to existing law.**—The powers vested in the Commissioner by this Act, shall be additional to any other powers to enforce any penalties, fines or forfeitures author-

ized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive. Id. § 12.

**§ 198. (66-1713). Immunity from prosecution.**— If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall not withstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence pursuant thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissable against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the Insurance Law of this State. Any such individual may execute, acknowledge and file in the office of the Commissioner a statement

expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced. Id. § 13.

Note: Section 15 of the above act states that same is cumulative and does not repeal or modify unfair practice acts dealing with other lines of business.

The laws of Arizona, Insurance Code, Chapter 64, Art. 21, Sections 1 to 21; of Colorado, Colorado Revised Statutes, Chapter 72, Article 15, Sections 1 through 16; of Indiana, Barnes Indiana Statutes, Title 39, Chapter 53, Sections 39-5301 to 39-5318; of Kansas, Chap. 40, Secs. 40-2401 through 40-2413, Kansas Insurance Code; of Kentucky, Article 28, Sections 304-924 to 304-945, Revised Statutes; of Louisiana, Title 22, Sections 1211 to 1217, as amended; of Mississippi, House Bill No. 145, effective as of February 29, 1956; of New Mexico, Insurance Laws of New Mexico, 1951, Sections 60-712 to 60-722; of Oklahoma, Oklahoma statutes, 1955 Supplement, Title 36, Sec. 117.1 to 117.1-14; also shown 1955 Supplement to Oklahoma Insurance Laws, Sec. 79(a) (sub-section A to N) to Sec. 79(i); of Tennessee, Article XIX, Sections 6459.56 to 6159.64; all are substantially identical with

the laws of Arizona above set out, and all, with the exception of the laws of Mississippi, are set out in Commission's Exhibit No. 58 which has been sent up as a part of the record. A certified copy of the laws of the State of Mississippi was made a part of the record by Order entered by the Federal Trade Commission May 11, 1956. (R. 161)

## ILLINOIS

Smith-Hurd Illinois Annotated Statutes, Chapter 73, Sections 761 to 1013.

## ILLINOIS

## PERTINENT INSURANCE STATUTES

Smith-Hurd Ill. Annotated Statutes, Chapter 73, Sec. 761

"Misrepresentation and Defamation Prohibited. [1] No company doing business in this State, and no officer, director, agent, clerk or employee thereof, broker, or any other person, shall make, issue or circulate or cause or knowingly permit to be made, issued or circulated any estimate, illustration, circular, or verbal or written statement of any sort misrepresenting the terms of any policy issued or to be issued by it or any other company or the benefits or advantages promised thereby. . ."

"(4) Any company, officer, director, agent, clerk or employee thereof, broker, or other person who violates any of the provisions of this section, or knowingly participates in or abets such violation, shall be required to pay a penalty of not less than one hundred dollars, nor more than one thousand dollars, to be recovered in the name of the People of the State of Illinois by the State's Attorney of the county in which the violation occurs and the penalty so recovered shall be paid into the county treasury."

"(5) No company shall be held guilty of having violated any of the provisions of this section by reason of the act of any agent, solicitor or employee, not an officer, director or department head thereof, unless an officer, director or department head of such company shall have knowingly permitted such act or shall have had prior knowledge thereof."

Chapter 73, Section 1013: "The Director is charged with the rights, powers and duties appertaining to the enforcement and execution of all the insurance laws of this State. He shall have the power

(a) to make reasonable rules and regulations as may be necessary for making effective such laws;

(b) to conduct such investigations as may be necessary to determine whether any person has violated any provision of such insurance laws; and

(c) to conduct such examinations, investigations

and hearings in addition to those specifically provided for, as may be necessary and proper for the efficient administration of the insurance laws of this State."

## MISSOURI

Revised Statutes of Missouri, 1949, Chapter 376, Sections 376.590 and 376.600.

## CHAPTER 376

## LIFE AND ACCIDENT INSURANCE FROM THE REVISED STATUTES OF MISSOURI, 1949

**376.590. Misrepresentations, false estimates and circulars prohibited—agents—notes to be held until policy delivered.**

1. No life insurance company doing business in this state, and no officer, director, or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof.

2. Any person who shall solicit an application for insurance upon the life of another shall, in any

controversy between the assured or his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company and not the agent of the assured, nor shall any life insurance company or agent sell, discount or otherwise dispose of any note or notes taken for payment of life insurance premium or premiums, before delivering to the applicant, in person, the policy for which said note or notes shall have been given. (5844)

**376.600 Penalty for violating Section 376.590.**

Any life insurance company which may violate any of the provisions of section 376.590, or which may permit any of its agents or representatives in this state to violate said provisions, shall have its certificate of authority or license to transact business in Missouri revoked by the state superintendent of insurance, and shall be for a period of five years barred from the further transaction of business in this state; and any agent, solicitor or representative in this state of any such insurance company who shall violate any of the provisions of said section shall be deemed guilty of a misdemeanor, and, on conviction thereof, in any court of competent jurisdiction in this state, shall be fined not less than fifty nor more than five hundred dollars for each such offense or imprisoned in the county or city jail for not less than ten days nor more than six months, or by both such fine and imprisonment. (5845)

Section 375.230, Revised Statutes of Missouri, reads, in part, as follows:

"**Expulsion of foreign companies.**—Whenever it shall appear to the superintendent of the insurance division, from an examination made by himself, or from the report of the person or persons appointed by him, or from the statements of the company, that the affairs of any insurance company not incorporated by the laws of this state, and doing in this state any business mentioned in this chapter, are in an unsound condition, or that such company is insolvent, or that its capital or fund is impaired, or whenever, from any knowledge or information in his possession, such superintendent has reasonable cause to suspect that the further continuance by said company in business is hazardous to the public or to those holding its policies, the superintendent may suspend or revoke the certificate of authority granted to such company . . ."

Section 561.660, Title 28, Revised Statutes of Missouri reads as follows:

"**Publication of untrue, misleading or deceptive advertisements—Penalty**—1. Any person, firm, corporation, or association who, with intent to sell or in any wise dispose of merchandise, securities, **service, or anything offered** by such person, firm, corporation, or association, dir. .ly or indirectly, to the public for sale or distribution or with intent to increase the consumption thereof **or to induce the public in any manner**

**to enter into any obligation relating thereto** or to acquire title thereto or an interest therein, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to public, which advertisement contains any assertion, representation, or statement of fact which is untrue, **deceptive, or misleading,** shall be guilty of a misdemeanor.

2. And shall upon conviction thereof be punished by a fine or not less than twenty-five dollars, nor more than five hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or by both such fine and imprisonment: providing that anything herein shall apply to any proprietor or publisher of any newspaper or magazine which publishes, disseminates, or circulates any such advertisement without the knowledge of the unlawful or untruthful nature of such advertisement." (Emphasis supplied.)